IN THE IOWA DISTRICT COURT FOR POLK COUNTY

DOROTHY RIDDLE, NANCY McKNIGHT, BARBARA BRAAK, DIANE HAVENS, ALBERTA CURRIE, PATRICE FATEN, COREY STULL, MARGO RYAN, VALERIA KREIMEYER, CONNIE MITCHELL, and MARCIA DeMOSS, **Petitioners/Appellants,** **vs.** **PUBLIC EMPLOYMENT RELATIONS BOARD,** **Respondent,** **and** **IOWA DEPARTMENT OF INSPECTIONS AND APPEALS,** **Intervenor.**	**Case No. CV 4746** **RULING ON PETITION FOR JUDICIAL REVIEW**

On September 9, 2003, this Administrative Appeal came before the Court for contested hearing. Attorney Pamela J. Walker appeared on behalf of Petitioners, Dorothy Riddle, Nancy McKnight, Barbara Braak, Diane Havens, Alberta Currie, Patrice Faten, Corey Stull, Margo Ryan, Valerie Kreimeyer, Connie Mitchell, and Marcia DeMoss (hereafter "Petitioners").[1] Attorney Jan V. Berry appeared on behalf of Respondent, Public Employment Relations Board (hereafter "PERB"). Assistant Iowa Attorney General Jean Davis appeared on behalf of Intervenor, Iowa Department of Inspections and Appeals (hereafter "DIA"). Following oral arguments by counsel, review of the court file, the certified record, and applicable law, the Court enters the following ruling.

[1] Roberta Probasco was named as a petitioner in the Petition for Judicial Review, but was dismissed from the action on June 25, 2003.

ISSUE

Whether the Public Employment Relations Board's decision of April 17, 2003, granting the State's Motion for Summary Judgment and dismissing Petitioners' grievance appeal, is supported by substantial evidence in the record and not affected by error of law.

STATEMENT OF THE CASE

Petitioners, a group of state employee Health Facilities Surveyors working for DIA, filed a grievance with the Iowa Department of Personnel (hereafter "IDOP"), alleging that DIA violated the Iowa Administrative Code, specifically 581 I.A.C. §§ 4.5(1) and (2), when DIA hired a new Health Facilities Surveyor at an advanced appointment rate due to market conditions and/or his qualifications. Petitioners argued that because the new Health Facilities Surveyor was hired at an advanced appointment rate, their pay rate should be raised to the new hire's pay step. On November 30, 2001, IDOP denied Petitioners' group grievance for the third time, stating that in the exercise of its discretion under subrule 4.5(1), DIA is not required to raise Petitioners to the higher pay step.

On December 26, 2001, Petitioners filed their State Employee Grievance and Disciplinary Action Appeal with PERB pursuant to Iowa Code § 19A.14(1), claiming that DIA and IDOP (hereafter collectively the "State") violated 581 I.A.C. §§ 4.5(1) and (2). Both Petitioners and the State filed motions for summary judgment, and both motions were denied by a PERB Administrative Law Judge (hereafter "ALJ") on July 18, 2002. On August 16, 2002, the State filed an application to file an interlocutory appeal from the ALJ's denial of its Motion for Summary Judgment. PERB granted the State's application on September 17, 2002, and oral arguments were heard on December 16, 2002. On April 17, 2003, PERB issued its decision, which granted the State's Motion for Summary Judgment finding that there were no genuine issues of material fact to be resolved at a hearing and the State was entitled to prevail as a matter

of law. On May 13, 2003, Petitioners timely filed their Petition for Judicial Review with the Court.

STATEMENT OF THE FACTS

Petitioners, a group of 11 Health Facilities Surveyors, were hired by DIA in 2000 and 2001. Their job duties involve inspecting or "surveying" various health facilities in Iowa, including nursing homes and hospitals, to ensure the facilities are following state and federal law and providing appropriate medical care to patients. The majority of the Petitioners are registered nurses and have, at a minimum, a bachelor's degree. (Petitioners' Brief, p. 4). Additionally, all of the Petitioners had numerous years of experience in their respective field prior to their employment with DIA. (Petitioners' Brief, p. 4). In accords with IDOP procedures, Petitioners were hired at the first step of a seven-step pay grade.

On or about May 14, 2001, James Berkley (hereafter "Berkley") was hired by DIA as a Health Facilities Surveyor. Prior to hiring Berkley, DIA Deputy Director Steve Young filed a request with IDOP, citing IDOP subrule 4.5(1), requesting an advanced appointment rate for Berkley. The basis for the request was stated as follows: "Mr. Berkley has 11 years [of] nursing experience. The focus [of] that nursing experience has been both clinical and administrative. Most recently he has been the Director of Nursing in a long-term care facility." (Record, Ex. 2, Attach. 3). The request was reviewed and approved by IDOP, which meant that Berkley was hired at the sixth step of the pay grade – five steps above the pay rate at which Petitioners were hired.

When Petitioners learned of Berkley's advanced hiring rate, they began seeking explanations from various DIA supervisors. According to Petitioners, their education and experience equals or exceeds Berkley's education and experience. (Record, Ex. 7). Further,

Petitioners perform work similar to that of Berkley and the positions require "equal skill, effort, and responsibility, and are performed under similar working conditions." (Record, Ex. 7). Throughout multiple meetings held from June to August of 2001 between Petitioners and DIA management personnel, Petitioners were given varying reasons for paying Berkley at a higher pay rate, including market conditions, shortages of nurses and qualified applicants, and Berkley's qualifications. (Record, Ex. 7).

Petitioners filed three grievances with IDOP about Berkley's accelerated hiring rate. After their third grievance was denied by IDOP, Petitioners filed an appeal with PERB. PERB ALJ Charles Boldt denied both Petitioners' and the State's Motions for Summary Judgment, and the State filed an interlocutory appeal to review the ALJ's denial of the State's Motion for Summary Judgment. On April 17, 2003, PERB granted the State's Motion for Summary Judgment stating that the reason underlying DIA's decision to hire Berkley at an advanced rate was immaterial, and, thus, there was no genuine issue of material fact. Petitioners filed their Petition for Judicial Review requesting the Court to reverse PERB's decision of April 17, 2003, which granted summary judgment in favor of the State.[2]

STANDARD OF REVIEW

The Iowa Administrative Procedure Act, chapter 17A of the Iowa Code, governs judicial review of administrative agency decisions. Section 17A.19 authorizes the district court to review such decisions. The court shall reverse, modify or grant other appropriate relief from agency action if such action was based upon a determination of fact clearly vested by a provision of law in the discretion of the agency that is not supported by substantial evidence in the record before

[2] Petitioners also request the Court to enter summary judgment in their favor and to direct PERB to set Petitioners' wages at the rates requested. The Court is without jurisdiction to act in that capacity in ruling on the Petition for Judicial Review. The Court's role is limited to review of final agency action and the Court must either affirm PERB's decision or remand the case back to PERB for contested case adjudication.

the court when the record is viewed as a whole. IOWA CODE § 17A.19(10)(f). Substantial evidence means the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance. IOWA CODE § 17A.19(10)(f)(1). The adequacy of the evidence in the record to support a particular finding of fact must be judged in light of all the relevant evidence in the record, including any determinations of veracity by the presiding officer who personally observed the demeanor of the witnesses and the agency's explanation of why the relevant evidence in the record supports its material findings of fact. IOWA CODE § 17A.19(10)(f)(3).

The court shall also reverse, modify, or grant other appropriate relief from agency action if such action was based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency. IOWA CODE § 17A.19(10)(c). See also IOWA CODE § 17A.19(10)(a)-(n) (describing other grounds which mandate reversal, modification, or other appropriate relief from agency action). In making the determinations required by Iowa Code § 17A.19(10) subsections (a) through (n), the court shall not give deference to the view of the agency with respect to particular matters that have not been vested by a provision of law in the discretion of the agency. IOWA CODE § 17A.19(11)(b). However, appropriate deference is given when the contrary is true. IOWA CODE § 17A.19(11)(c).

The burden of demonstrating the required prejudice and the invalidity of agency action is on the party asserting invalidity. IOWA CODE § 17A.19(8)(a). The court shall make a separate and distinct ruling on each material issue on which the court's decision is based. IOWA CODE § 17A.19(9).

ANALYSIS AND CONCLUSIONS OF LAW

The issue before the Court is whether PERB's decision granting summary judgment in favor of the State is supported by substantial evidence in the record and is not affected by error of law. In the agency proceedings, Petitioners alleged that the State failed to substantially comply with two subrules of the Iowa Administrative Code, in particular 581 I.A.C. §§ 4.5(1) and (2). These subrules provide as follows:

> 581-4.5(19A) **Appointment rates.** An employee shall be paid at the minimum pay rate for the class to which appointed, except in the following instances:
>
> 4.5(1) *Individual advanced rate.* For new hires or promotions and upward reclassifications of employees in contract classes, the appointing authority may grant steps or pay rates in excess of the minimum. The appointing authority shall maintain a written record of the justification for the advanced rate. The record shall be a part of the official employee file. All employees possessing equivalent qualifications in the same class and with the same appointing authority may be adjusted to the advanced rate.
>
> 4.5(2) *Blanket advanced rate.* If there is a scarcity of applicants, an appointing authority may submit a written request to the director documenting the economic or employment conditions that make employment at the minimum pay rate for a class unlikely. The director may authorize appointments beyond the minimum rate for the class as a whole or in a specific geographical area. All current employees and new or promoted employees under the same conditions and in the same class shall be paid the higher rate. This rate shall remain in effect until rescinded by the director.

(Emphasis added). The first subrule allows for the appointment of an individual at a wage rate in excess of the minimum, and requires the appointing authority to maintain a written record of the reason for employing an individual at the advanced wage rate. This subrule also grants the appointing authority discretion to adjust the pay rate of all employees possessing equivalent qualifications in the same class to the advanced rate. The second subrule is narrower in scope and allows the appointing authority to adjust the wage rate of all employees when there is a scarcity of applicants. This is a "blanket" pay adjustment for all employees in a given class or geographic area.

Petitioners maintain that subrule 4.5(1) is not applicable because Berkley was not hired based on his individual qualifications. Petitioners allege that Bureau Chief Kathy Sutton, Division Administrator Marvin Tooman, Deputy Director Steve Young, and Director Kevin Techau cited market conditions as the justification for hiring Berkley at an accelerated wage rate. Therefore, Petitioners argue that subrule 4.5(2) applies, which requires DIA to raise Petitioners' wage rate to the rate at which Berkley was hired. In the alternative, Petitioners argue that even if subrule 4.5(1) is the applicable authority, it requires the appointing authority to exercise discretion in determining whether employees in the same classification should be raised to a higher rate. Petitioners allege that DIA's decision to place Berkley at an advanced pay rate, but not to adjust Petitioners' wage rate, was an abuse of discretion, arbitrary and capricious because DIA did not review the qualifications of existing employees to determine if Berkley had exceptional qualifications warranting placement at a higher rate of pay.

PERB asserts that DIA chose to grant an individual advanced rate under subrule 4.5(1) and not a blanket pay adjustment under 4.5(2). Nothing in the pertinent administrative code section indicates that specific situations must exist in order for DIA to utilize subrule 4.5(1); thus, subrule 4.5(1) is expansive in scope. PERB further argues that even if Berkley was hired due to market conditions or scarcity of applicants, the language of subrule 4.5(2) indicates that the appointing authority may seek a blanket pay adjustment, but is not required to do so. PERB maintains that DIA may choose to utilize either subrule 4.5(1) or subrule 4.5(2).

The standard of review that PERB must apply in deciding state employee appeals is found in Iowa Code § 19A.14(1), which provides, in pertinent part: "Decisions rendered shall be based upon a standard of substantial compliance with this chapter and the rules of the department of personnel." IOWA CODE § 19A.14(1) (2003). PERB argues that the only issue before it was

whether DIA substantially complied with subrule 4.5(1). PERB found that DIA fully complied with subrule 4.5(1) in regards to Berkley's hiring.

In its April 17, 2003, Decision on Appeal, which granted the State's Motion for Summary Judgment, PERB held as follows:

> The ALJ determined that the reason for DIA's decision to pay Berkley at a higher rate is a material fact which remains in dispute, and denied the State's motion for summary judgment. We disagree, and conclude the State's motion should be granted.
>
> We find nothing in the relevant IDOP rules which required DIA to use subrule 4.5(2) in this instance, regardless of the reason for its action. Use of subrule 4.5(1) is simply not restricted to circumstances involving any particular reasons. Accordingly, the reason underlying DIA's decision is immaterial. We also find no restriction in the rule on DIA's ability to pay a newly hired employee at an advanced rate pursuant to IDOP subrule 4.5(1), or on the exercise of its discretion in determining whether to pay other employees at a higher rate under that subrule.

(Record, Ex. 22. pp. 3-4). PERB held that because no genuine issue of material fact remained in dispute, the State was entitled to summary judgment.

The Court finds that PERB's interpretation of the subrules is appropriate given the plain meaning of the subrules. "Precise, unambiguous language will be given its plain and rational meaning in light of the subject matter." Carolan v. Hill, 553 N.W.2d 882, 887 (Iowa 1996). While it specifically addresses "scarcity of applicants," subrule 4.5(2) is not mandatory. The appointing authority may choose to submit a written request to the director documenting the economic or employment conditions that warrant an increase in the wage rate. If the appointing authority takes this action, then all employees under the same conditions and in the same class must be paid at the higher rate. However, even if there is a scarcity of applicants, the appointing authority is not required by this subrule to seek a blanket pay adjustment.

The plain meaning of the language in subrule 4.5(1) indicates that the subrule is expansive in scope. As PERB held, there is nothing in the language of the subrule that restricts

its application to circumstances involving any particular reasons. Therefore, in requesting an advanced rate of pay for Berkley, DIA relied upon subrule 4.5(1), and asserted that the request was based on Berkley's qualifications and experience.

Under subrule 4.5(1), discretion is granted to the appointing authority to adjust the wage rate of employees possessing equivalent qualifications in the same class when an individual, such as Berkley, is hired at an accelerated rate. Petitioners maintain that DIA abused its discretion under subrule 4.5(1). Contrary to Petitioners' wishes, PERB does not review DIA's actions under an "abuse of discretion" standard. Instead, PERB is limited to determining whether DIA substantially complied with the IDOP subrules. See IOWA CODE § 19A.14(1). PERB found that DIA fully complied with the subrules. Even though it was not required to assess the discretion exercised by DIA, PERB argues in its Brief that DIA's financial inability to provide discretionary pay adjustments, as evidenced by Petitioners' affidavits (See Record, Ex. 7, Attach. 1-3), provides enough support for DIA's decision to not raise Petitioners' wage rate. The Court agrees with PERB's assessment.

Petitioners maintain that if the Court were to adopt PERB's interpretation of the subrules, then the purpose of the rules would be circumvented. However, it is not within PERB's power to determine the fairness of the rules, nor is it within the Court's power to do so. According to Iowa Code § 19A.14(1), PERB's authority is limited to deciding whether DIA substantially complied with the subrules. The Court's authority in ruling on this Petition for Judicial Review, according to Iowa Code § 17A.19, is limited to reviewing PERB's April 17, 2003, decision to determine whether it is supported by substantial evidence in the record and not affected by error of law. While the Court may sympathize with Petitioners' position, this Petition for Judicial

Review challenging PERB's April 17, 2003 decision is not the appropriate method to challenge the fairness or validity of the subrules.[3]

Summary judgment is warranted when the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to summary judgment as a matter of law. IOWA R. CIV. P. 1.981(3). PERB found that summary judgment in favor of the State was appropriate because no genuine issue of material fact remained in dispute. The Court's role is to broadly and liberally apply the agency's findings in order to uphold rather than defeat the agency's decision. Freeland v. Employment Appeal Bd., 492 N.W.2d 193, 197 (Iowa 1992). Even if reasonable minds might disagree about the conclusions to be drawn from the evidence, the findings of the agency are binding on the Court. Id. "The question this court must ask is not whether the evidence might support a different finding, but whether there is substantial evidence to support the finding actually made by the board." Aluminum Co. of America v. Employment Appeal Bd., 449 N.W.2d 391, 394 (Iowa 1989).

The Court finds that PERB's decision is supported by substantial evidence in the record and is not affected by error of law. Based on all evidence in the certified record, the quantity and quality of evidence that would be deemed sufficient by a neutral, detached and reasonable person exists to support the final agency action. See IOWA CODE § 17A.19(10)(f)(1). Additionally, the final agency action is not based on an erroneous interpretation of a provision of law; therefore, the final agency action is affirmed. See IOWA CODE § 17A.19(10)(c).

ORDER

IT IS ORDERED that the final decision of the Public Employment Relations Board dated April 17, 2003 is **AFFIRMED**.

[3] See Iowa Code §§ 17A.7 and .8.

IT IS FURTHER ORDERED that court costs are assessed to **PETITIONERS**.

SO ORDERED this 30th day of October, 2003.

RICHARD G. BLANE, II, District Judge
Fifth Judicial District of Iowa

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